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**IN THE
COURT OF APPEALS OF INDIANA**

A.P.B.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 71A03-0703-JV-104
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Harold E. Brueseke, Magistrate
Cause No. 71J01-0612-JD-001050

OCTOBER 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

A.P.B., a seventeen-year-old juvenile, admitted an allegation that he was guilty of Fleeing Law Enforcement, which would be a Class A misdemeanor if committed by an adult. The State dismissed another allegation that A.P.B. had also committed Receiving Stolen Property, a Class D felony if committed by an adult. The Probation Department recommended that A.P.B. be committed to the custody of the Department of Correction at the Indiana Boys School (App. at 17).

The court, in effect, followed that recommendation and awarded wardship of A.P.B. to the Department of Correction.

This appeal challenges the placement of A.P.B. with the Department of Correction instead of a less restrictive disposition. As A.P.B. correctly concedes, juvenile disposition placement is within the sound discretion of the dispositional court but that the underlying policy for such determination favors the least restrictive disposition.

A.P.B. has had numerous referrals to the juvenile court system beginning at age eleven. At various times he was placed upon probation but because of violations the dispositions were modified. On one occasion the violation resulted in a sixty-day detention. (App. at 16). On a second occasion he was committed to the Department of Correction and was placed at the Pendleton Juvenile Correctional Facility. He was released on parole in October 2006, but while on parole committed the instant offense.

This offense consisted of A.P.B. being subjected to a traffic stop by a police officer. But A.P.B. exited his vehicle and fled.¹ Despite being ordered to stop by the pursuing officer, A.P.B. did not do so, but ran into his own home where he was eventually apprehended.

A.P.B. emphasized that during his previous commitment to the D.O.C. he obtained his G.E.D and also completed some sort of a program involving safe food preparation (Tr. at 6). He also understandably focuses upon the testimony of his Department of Correction Parole Officer. She stated that A.P.B. was doing “fabulous” (Tr. 8) while on parole and that he was working at an Arby’s Restaurant and was a valued employee, hoping to become a manager. He had taken steps to gain admission to Ivy Tech and wanted to participate in its culinary arts curriculum. The parole officer testified that in terms of performance on parole, A.P.B. was a “superstar” and that she contemplated putting him for a discharge in about a month. She did not agree with the recommendation that he be go back to the Department of Correction.

The State counters by referencing A.P.B.’s long juvenile history, including an adjudication for burglary in 2004 and for possession of marijuana in 2005. The State reaches a reasonable conclusion that despite A.P.B.’s salutary steps toward modifying his behavior and becoming a productive member of the community, his frequent adjudications, commitments, probation and parole indicate that he has not been wholly able to abide by the law.

¹ The allegation which was dismissed by the State involved A.P.B.’s use, on the occasion in question, of a vehicle apparently stolen from a Danielle McKay.

Nevertheless, it is apparent from the dispositional recitation from the bench by the juvenile court, that he focused principally upon the Probation Department's recommendation because of the desire to promote public safety, responsibility of members of the family and the duties of parents. This focus indicates very little upon the juvenile's successful efforts to achieve a productive future in the community and the strides he has taken to lead a law-abiding life.

To the contrary, the court accepted the probation department's recommendation because with the placement:

there will be some accountability and responsibility on your mom's part after you're released from the Department of Corrections (sic). This isn't strictly go there, get out, get back on parole. The recommendation of the Department of Corrections (sic) with after care and follow up on the part of the parent. What I've heard and what I've read today I believe your mom has minimized your accountability and your responsibility. . ."

(App. at 45).

To be sure, A.P.B.'s past history of conduct indicates a lack of responsibility and accountability for his own actions. However, the court appears to have shifted the emphasis and places more upon the arguable failings of the parent.

We conclude that here, as in E. H. v. State, 764 N.E.2d 681 (Ind. Ct. App. 2002), trans. denied, there is a less restrictive disposition that will least interfere with family autonomy and is least disruptive of family life. If A.P.B. were ordered to remain on parole, and, along with his mother, continue to obtain counseling and other assistive

programs to support and encourage future acceptable conduct by all concerned, the rehabilitative goals of the juvenile justice system could be met.

We remand to the juvenile court to vacate its dispositional order and to modify it in a manner not inconsistent with this decision.

Reversed and remanded with instructions.

DARDEN, J., and BAILEY, J., concur.